

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

JOSEPH MILES v. STATE OF TENNESSEE, RICKY BELL, WARDEN

**Appeal from the Criminal Court for Davidson County
No. 3729 J. Randall Wyatt, Jr., Judge**

No. M2006-02088-CCA-R3-HC - Filed June 26, 2007

This matter is before the Court upon the State's motion to affirm the judgment of the habeas corpus court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Petitioner has appealed the habeas corpus court's order summarily dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the habeas corpus court was correct in summarily dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the habeas corpus court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Joseph Miles, Pro Se, Nashville, Tennessee.

Robert E. Cooper, Jr., Attorney General & Reporter; Sophia Lee, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

Petitioner has a lengthy history of convictions. On April 29, 1986, Petitioner pled guilty to one count of simple robbery in case number 6441. He received a six-year sentence which called for fifteen months in incarceration and the balance to be served on probation. On July 17, 1990, Petitioner was convicted by a jury for possession of Schedule II drugs for resale in case number 7715. On October 12, 1990, the trial court sentenced Petitioner to eight years, with two months to be served in incarceration and the remainder on probation. Petitioner's sentences for both case number 6441 and 7715 were to be served concurrently. Also on October 12, 1990, Petitioner pled guilty to jail escape in case number 7886. The trial court sentenced Petitioner to one year, two

months to be served in incarceration and the remainder on probation, to be served consecutively to case number 6441 and concurrently with case number 7715. On May 21, 1992, a jury convicted Petitioner for one count of robbery in case number 8295. He was sentenced to four years incarceration to be served consecutively to case numbers 6441, 7715 and 7886. On May 12, 1998, a jury convicted Petitioner of one count of second degree murder for the shooting death of an unarmed victim in case number 96-0237. *Joseph Miles v. State*, No. M2003-01871-CCA-R3-PC, 2005 WL 2438392, at *1 (Tenn. Crim. App., at Nashville, Sept. 26, 2005). The trial court sentenced Petitioner as a Range II violent offender to forty years incarceration to be served at 100%. *State v. Joseph Miles*, No. M1993-00682-CCA-R3-PC, 2001 WL 166368, at *1 (Tenn. Crim. App., at Nashville, Feb. 16, 2001), *perm. app. denied*, (Tenn. June 18, 2001).

Petitioner filed a Petition for Post-conviction relief. The post-conviction court denied the petition, and this Court affirmed the denial on appeal. *Joseph Miles v. State*, 2005 WL 2438392 at *7. On March 20, 2006, Petitioner filed a *pro se* Petition for Writ of Habeas Corpus alleging that the trial court did not have jurisdiction to run his second degree murder conviction, case number 96-0237, concurrently to his previous convictions for which he was out on parole, the trial court did not have the jurisdiction to run his sentences from case numbers 7886 and 7115 concurrently, and the trial court did not have authority or jurisdiction to use his prior convictions to increase his range from Range I to Range II. The habeas corpus court summarily dismissed the petition. Petitioner filed a notice of appeal.

Analysis

The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings *de novo* without a presumption of correctness. *Id.* Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. *See Taylor*, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d 619 (Tenn. Crim. App. 1994), *superceded by statute as stated in State v. Steven S. Newman*, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Hickman*, 153 S.W.3d at 19-20; *Archer*, 851 S.W.2d at 165. For the benefit of individuals such as Petitioner, our legislature has explicitly laid out the formal requirements for a petition for a writ of habeas corpus at T.C.A. § 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, is a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

"A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements." *Hickman*, 153 S.W.3d at 21.

Petitioner argued three issues in his petition, which were addressed by the habeas corpus court in its order summarily dismissing the petition. Petitioner argues that his sentence in Case number 96-0237, for second-degree murder, is void because the trial court did not order that his sentence be served consecutively to his previous sentences according to Rule 32(c)(3)(A) of the Tennessee Rules of Criminal Procedure, that his sentence in Case number 7886, for jail escape, is void because it was ordered to be served concurrently to his sentence in Case number 7715, for possession of a controlled substance, and that his sentence in Case number 96-0237 is also void because the trial court designated Petitioner as a Range II offender based upon his previous convictions that were void.

T.C.A. § 40-28-123(a) and Rule 32(c)(3)(A) of the Rules of Criminal Procedure require that a new sentence be run consecutively to a prior sentence when the new sentence derives from an offense committed while the defendant is on parole for previous felony. Rule 32(c)(3) states this is the case “whether the judgment explicitly so orders or not.” Under this Rule, Petitioner’s sentence for his second degree murder conviction should be run consecutively to his previous sentences. The judgment form for Petitioner’s second degree murder conviction is blank with respect to whether that sentence is to be served concurrently or consecutively to his prior sentences.

In *Hogan v. Mills*, 168 S.W.3d 753 (Tenn. 2005), the petitioner’s basis for habeas corpus relief was also based on mandatory consecutive sentences under Rule 32(c)(3)(A). Our supreme court stated:

Hogan is not entitled to relief on the ground that the judgments for the 1985 convictions do not explicitly provide that the sentences are to be served consecutively to the sentence for the 1981 conviction. Rule 32(c)(3) mandates that new sentences run consecutively to the prior sentence “whether the judgment explicitly so orders or not.” Thus, the new sentences run consecutively to the prior sentence even if the judgment is silent in this regard.

Hogan, 168 S.W.3d at 756. Therefore, our supreme court has held that a judgment’s silence with regard to consecutive sentencing is not a basis for habeas corpus relief. The judgment in case number 96-0237 is not void on its face. *Id.*; *See also, Barry Sotherland v. State*, No. M2006-01891-CCA-R3-PC, 2007 WL 1237786, at * 4 (Tenn. Crim. App., at Nashville, April 27, 2007). Petitioner is not entitled to relief on this issue.

Petitioner also argues that his judgment under case number 7886 for jail escape is void because it was run concurrently to his sentence in case number 7715, for possession of a controlled substance. The affidavit submitted by Candace Whisman, the Director of Sentence Management Services states that Petitioner’s sentences for case numbers 6441, 7886 and 7715 all expired on August 9, 2000. Therefore, Petitioner, even if his sentence was void, he is not entitled to relief because he is no longer imprisoned for these offenses. Even so, Petitioner’s judgments are not void.

T.C.A. § 39-16-605(c) states, “[a]ny sentence received for a violation of this section shall be ordered to be served consecutively to the sentence being served or sentence received for the charge for which the person was being held at the time of the escape.” Petitioner was convicted for simple robbery in case number 6441 on April 29, 1986 and was sentenced to fifteen months incarceration in the workhouse and the remainder on probation. On November 13, 1989, Petitioner committed the offense of possession of a controlled substance, which was the basis of case 7715. Petitioner’s probation was revoked from case number 6441, and he was sentenced to six years incarceration in the workhouse. On August 8, 1990, Petitioner committed the offense of escape, which was the basis of case number 7886. On October 12, 1990, the trial court entered the judgments for cases 7886 and 7715. The judgments stated that the sentence in case 7886, for escape, would run consecutively to case 6441, to be served in the workhouse. The sentence in 7715 would be served concurrently to both cases 6441 and 7886 in the Tennessee Department of Corrections. Petitioner’s judgment for case number 7886 states that his sentence is to be served in the workhouse and run consecutively to his sentence in 6441, which was also to be served in the workhouse. Petitioner’s sentence for 7715 was to be served in the Department of Corrections. It is logical to assume that the escape conviction stems from an escape from Petitioner’s incarceration for case number 6441. This is in accordance with the law. There is nothing in the judgments for 7886 and 7715 to show that Petitioner’s escape conviction was an escape from his sentence for case 7715. For this reason, we find no support for Petitioner’s argument that the sentence in 7886 is required to be served consecutively to case 7715. Therefore, Petitioner’s judgment for case 7886 is not void on its face. Petitioner is not entitled to relief based upon this issue.

Petitioner’s final issue is that his sentence in case number 96-0237 is void because the trial court used previous void convictions to designate Petitioner as a Range II offender. Petitioner has not shown how any of his previous convictions are void. Likewise, he has not shown that the trial court did not have jurisdiction or authority to use his prior convictions to designate the Petitioner as a Range II offender. Therefore, Petitioner is not entitled to relief based upon this issue.

Petitioner also raises some arguments based upon the Rules of Civil Procedure. Petitioner argues, based upon Rules 12.01 and 7.01 of the Tennessee Rules of Civil Procedure that the habeas corpus court did not allow him time to respond to the State’s motion to dismiss and that the habeas corpus court erred in granting the State’s motion to dismiss without first converting it to a motion for summary judgment under Rule 56 of the Rules of Civil Procedure. It is true that habeas corpus proceedings are essentially civil in nature. However, the Rules of Civil Procedure are applicable only where consistent with T.C.A. § 29-21-101 et seq. Rule 12 of the Tennessee Rules of Civil Procedure provides trial courts the authority to dismiss complaints *sua sponte* when the pleadings thereon fail to state a claim upon which relief may be granted. Such is the case with the Petitioner’s Petition for Writ of Habeas Corpus Relief. Therefore, this issue has no merit.

Conclusion

Rule 20 of the Rules of the Court of Criminal Appeals provides:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

(1)(a) The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge,

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20, and we affirm the judgment of the habeas corpus court.

JERRY L. SMITH, JUDGE